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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 32

JAMES R. HOFFA, *Petitioner*

v.

UNITED STATES

No. 33

THOMAS EWING PARKS, *Petitioner*

v.

UNITED STATES

No. 34

LARRY CAMPBELL, *Petitioner*

v.

UNITED STATES

No. 35

EWING KING, *Petitioner*

v.

UNITED STATES

MOTION FOR RELIEF BECAUSE OF GOVERNMENT WIRETAPPING, ELECTRONIC EAVESDROPPING AND OTHER INTRUSIONS

Come now the petitioners by their counsel and respectfully represent to this Court as follows:

1. (a) On January 11, 1967, petitioners, for the first time, obtained direct evidence that agents of the Department of Justice had eavesdropped on conferences

between petitioners and their counsel during the course of the trial of this cause, and tapped the telephones of Petitioner Hoffa and his counsel in their offices and living quarters during the trial;

(b) On December 30, 1966, petitioners, for the first time, obtained direct evidence that an agent of the Department of Justice had in his possession recordings of telephone conversations and private consultations between Petitioner Hoffa and his counsel, which occurred before and after May 9, 1963, the day the indictment in this cause was returned by the grand jury;

(c) On December 28, 1966, an officer of the police department of the City of Detroit, Michigan stated in an affidavit that during 1962 and 1963, he had monitored and transcribed telephone conversations transmitted over the telephone of William E. Bufalino, one of Petitioner Hoffa's counsel in this case. The circumstances of these interceptions strongly suggest that they were performed by the local police for Federal officers;

(d) Discovery of the foregoing facts is the culmination of prolonged effort to establish that the Federal Government for many years has been intruding on Petitioner Hoffa's right to counsel and obtaining evidence against him by unlawful methods; and

(e) All of the foregoing appears more fully in the affidavits now filed in this Court and which are printed in the appendix to this motion. These affidavits are summarized in the following narrative.

I. WIRETAPPING AND EAVESDROPPING DURING THE TRIAL

2. Trial of this case started on January 20, 1964. Ten days earlier William E. Bufalino, one of the attorneys for Petitioner Hoffa, established living quarters and offices for all petitioners and their attorneys at the Hotel Patten in Chattanooga, Tennessee. (Bufalino Aff. App. 1a)

3. Bufalino arranged for the Petitioner Hoffa to occupy Rooms 912 and 914; James E. Haggerty, Sr., chief trial counsel for Petitioner Hoffa was assigned suite 908, which consisted of a bedroom and a living room which was converted into a conference room for petitioners and their counsel. Bufalino occupied Room 906 which also served as an office. (Bufalino Aff. App. 1a)

4. A day or two before commencement of the trial an informer and wiretapper for the Federal Bureau of Investigation placed radio transmitters in rooms 906, 908, 912-914; and tapped the telephones in those rooms. (Nichols Aff. App. 5a)

5. Benjamin David Nichols, of Heiskell, Tennessee, had been an informer and a wiretapper for the F.B.I. from 1956; and from 1958 has been paid Two Hundred Dollars ($200.00) a month for his services by a Government agent. Until six months ago he worked under the supervision of, and was paid by, F.B.I. Agent John A. Parker, who was then stationed at Knoxville, Tennessee. He is now paid and supervised by Government Agent Quinn, who is stationed at Oak Ridge, Tennessee. (Nichols Aff. App. 3a)

6. Nichols was first engaged to tap the telephones and install the transmitters in the Hotel Patten and the Read House about the middle of January, 1964. Agent Parker had asked him to come to his office where he was introduced to FBI Agent James L. McGovern.

7. On January 16th or 17th, Agent Parker brought to Nichols' home two tape recorders, numerous transmitters, and two radio receivers. Nichols was told to use the code name "Major." Pursuant to instructions he went to Chattanooga and called the F.B.I. under the code name. (Nichols Aff. App. 3a, 4a)

8. As further instructed, Nichols met with two men, one of whom identified himself as Walter Sheridan (Walter Sheridan was in charge of the investigation of Petitioner Hoffa, and was also a Special consultant to the then Attorney General). Sheridan introduced Nichols to the second man as "Major." Sheridan instructed Nichols to install the equipment in the rooms on the Tenth Floor of the Read House in accordance with a sketch which Sheridan handed to him. (The jury which tried petitioners were quartered on the Tenth Floor of the Read House). Sheridan handed some keys to the man who accompanied him. (Nichols Aff. App. 4a)

9. Nichols and the unidentified man then installed the transmitters and tapped the telephones in the various rooms and placed a receiver and a recorder in a room near the elevator on the Tenth Floor of the Read House (where the jury was quartered). Nichols then tested the transmitter and telephone taps at the request of the unidentified man. (Nichols Aff. App. 4a, 5a)

10. Nichols and the unidentified man then went to the ninth floor of the Patten Hotel, and following a

sketch given to him by Sheridan, installed electronic transmitters in Rooms 906, 908, 912 and 914. In the basement of the hotel, he tapped the telephones of those rooms. With the unidentified man, he tested the equipment. They then left. (Nichols Aff., App. 5a)

11. These rooms, which had been bugged and wire tapped, were used by the petitioners and their attorneys for conferences. The attorneys discussed general trial strategy, tactics, and the testimony of prospective witnesses. The rooms were also used for private consultations between individual petitioners and their counsel. (Bufalino Aff., Hoffa Aff., 1a, 2a, 9a, 10a)

12. Petitioner Hoffa also used these rooms to confer with his counsel regarding the defense of another criminal charge, the trial of which was to commence in Chicago, Illinois after the termination of this trial. (Bufalino Aff., Hoffa Aff., Ragano Aff., App. 2a, 9a, 10a, 14a)

13. The room telephones were used to communicate with other attorneys who had not been available for conferences so as to advise them of decisions made with respect to trial strategy; as well as for the purposes of communicating with witnesses to schedule their appearances and to discuss their testimony. (Bufalino Aff. App. 2a)

14. After Nichols completed the installations in the Patten Hotel, he and the unidentified man were met by Sheridan and Nichols [redacted] was driven to a hotel. On inquiry, Sheridan was advised by Nichols that all of the installations had checked out. (Nichols Aff. App. 5a)

15. Nichols was familiar with the equipment he had installed, having used it many times for interceptions,

wire tapping, recording and monitoring conversations. He had tapped many telephone lines while working for the FBI, as well as having performed other functions for it and other agencies. (Nichols Aff., App. 5a, 7a)

16. Nichols possesses the requisite technical skill to tap telephone wires and plant eavesdropping devices, and to have installed them in the hotels. (Spindel Aff. App. 56a)

17. Nichols had been instructed by Sheridan to remain in Chattanooga to maintain the equipment. Some weeks later, he was instructed to meet Sheridan at the Patten Hotel. Sheridan and he went to the basement. Sheridan told him the recorder was not working properly. A jack was loose and Nichols pushed it back in place. Sheridan picked up several tapes. Sheridan said he knew they were going to win this case because Hoffa and his "legal beagles" were going crazy. (Nichols Aff., App. 6a)

18. Sheridan and Nichols then went to the Read House. Sheridan went into the hotel and reappeared shortly with another package of tapes. Sheridan indicated to Nichols that the jurors had pretty well made up their minds. (Nichols Aff., App. 6a)

19. Nichols never met Sheridan thereafter. He kept in touch with Parker who instructed him to remain in Chattanooga. He did remain in the vicinity for three months. (Nichols Aff., App. 6a, 7a)

20. John Hooker, Sr., appointed Special Assistant to the Attorney General of the United States to conduct this prosecution, advised a business associate, Irving Davidson, in February, 1964, not to call him on the telephone at the Read House because the telephones

were tapped. Davidson had advised Hooker that he intended to visit him and Petitioner Hoffa who was then on trial in Chattanooga. Hooker cautioned him against going to Chattanooga because everyone visiting Mr. Hoffa was under strict surveillance; that all rooms and telephones in the Patten Hotel were bugged, as well as public telephones in the vicinity of the hotels. (Davidson Aff., App. 16a)

21. After the trial, Hooker told Davidson he was sorry he had ever undertaken the prosecution because he did not approve of the way the evidence had been gathered; and that he did not believe in wire tapping or bugging. (Davidson Aff., App. 17a, 18a)

22. In Davidson's home, after the trial, Mrs. John Hooker, in the presence of John Hooker, cautioned Davidson against further telephonic communication with Petitioner Hoffa because everything Hoffa said on the telephone was bugged. (Davidson Aff., App. 17a, 18a)

23. On December 20, 1966, Cartha D. DeLoach, Assistant Director of the Federal Bureau of Investigation, told William Loeb, a publisher of several New England newspapers, that petitioner's lawyers should ask the Department of Justice to conduct an investigation of wire tapping in connection with petitioner's trials, stating that such an investigation, he was sure, would turn up extensive evidence of wire tapping. When Loeb asked permission to publish DeLoach's statement, DeLoach told him he was willing to give him the information on a confidential basis, but if Loeb attempted to publish it, that DeLoach would deny that he had ever talked to him about it. (Loeb Aff., App. 19a, 20a)

II. WIRETAPPING AND EAVESDROPPING PRIOR TO PETITIONER'S TRIAL

24. On December 29, 1966, Petitioner Hoffa and his counsel learned for the first time of intensive eavesdropping and wiretapping by Government agents of petitioner's telephone consultations with his counsel, and their private conferences, before and after his indictment on May 9, 1963.

25. Herman A. Frazier is a retired Chief of Detectives of Huntington, West Virginia. Alfred Nelson Paden is now a captain of police in the same city. Albert P. Cole had been Huntington's Director of Personnel and is now employed in private industry.

26. Frazier, Paden and Cole were the subjects of an investigation by the same Grand Jury which indicted petitioners. They were indicted for alleged jury tampering and subsequently acquitted. (Cole, Aff. App. 31a)

27. Prior to his indictment, Paden was interviewed on many occasions by FBI agents and by Walter Sheridan. Sheridan told Paden that they (Paden, Cole and Frazier) were going to be indicted unless they changed their story that their presence in Nashville during the time in question was legitimate. (Paden Aff., App. 28a)

28. Sheridan mentioned that he was aware of Paden's reputation in the electronic field. Sheridan then played a segment of a tape. Sheridan asked him if he recognized any of the voices. Paden had heard petitioner Hoffa on TV and radio and he told Sheridan, that he thought the voice was that of Petitioner Hoffa. Sheridan agreed. Sheridan identified the other voice as a lawyer named Haggerty. (James E.

Haggerty, Sr., now deceased, was Petitioner Hoffa's chief trial counsel in this case.) The conversation was about Frazier, Cole and Paden. Petitioner Hoffa was asking Haggerty who they were and why they had been in Nashville. Haggerty told Hoffa he had never heard of them. (Paden Aff., App. 28a, 29a)

29. Such a telephone conversation did occur between Petitioner Hoffa and Haggerty. (Hoffa Aff., App. 35a)

30. Sheridan then played portions of a tape which was between Hoffa and a person named Bufalino. (William E. Bufalino was one of Petitioner Hoffa's counsel.) Hoffa asked Bufalino if Tweel or Dorfman (both were co-defendants in the trial and were acquitted) had gotten Frazier, Cole, and Paden "into it." Bufalino told Hoffa he did not believe Dorfman or Tweel were in any way involved with Frazier, Paden and Cole. (Paden Aff., App. 29a)

31. Such a telephone conversation did occur between Petitioner Hoffa and his attorney Bufalino. (Hoffa Aff., App. 35a, 36a; Bufalino Aff., App. 37a, 38a)

32. Paden, a graduate of the FBI Police Academy, has extensive knowledge in electronics and wire tapping and has done research and development in the wire tapping field, now states the tapes he heard were recordings of telephone conversations. (Paden Aff., App. 29a)

33. Frazier was questioned by F.B.I. agents and Government attorneys. Most of the interviews were with Walter Sheridan who identified himself as an assistant to Attorney General Kennedy. Sheridan told Frazier he was depending on him as a police officer to help convict Hoffa. (Frazier Aff. App. 22a)

34. On the occasion of one of his interviews, Frazier says Sheridan seemed to be convinced that Tweel and Dorfman were responsible for Frazier, Paden and Cole having been in Nashville.

35. Sheridan told Frazier that "this will show you why I am asking you about Tweel and Dorfman." Sheridan turned on a tape recorder. Sheridan identified the voices as those of Hoffa and an attorney. The conversation was substantially the same as that narrated in Par. 28, supra. Frazier did not hear the beginning of the call, but at the end heard what appeared to be a receiver being placed on the cradle. (Frazier Aff. App. 24a, 25a)

36. Sheridan then played a tape of another conversation between voices he identified as those of Hoffa and Bufalino. This conversation as narrated by Frazier is substantially the same as that set forth in Par. 30, supra. Frazier heard a phone click and the conversation ended. (Frazier Aff. App. 25a)

37. This telephone conversation did occur. (Bufalino Aff., App. 37a; and Hoffa Aff., App. 35a, 36a)

38. Sheridan played another tape which sounded like a phone ringing. A female voice answered giving several names including "Osborn". Hoffa's voice said, "Put Tommy on the phone". (Z. T. "Tommy" Osborn was local counsel for Petitioner Hoffa from early in January 1963 to November 1964.) Hoffa inquired whether he knew the men from Huntington (Frazier, Cole and Paden). Osborn said he had met them. In response to Hoffa's inquiry, Osborn said he saw no reason for interviewing Paden, Cole and Frazier. Osborn and Hoffa then discussed other legal matters. Frazier recognized the voices of Osborn, Hoffa and Bufalino. (Frazier Aff. App. 25a, 26a)

39. Such a telephone conversation did occur. (Osborn Aff. App. 40a; Hoffa Aff. App. 36a)

40. Both Frazier and Paden were convinced that their phones were being tapped. They established a fictitious name—"Armentrout"—which they used only in phone conversations indicating that "Armentrout" was connected with their presence in Nashville. Subsequently, Sheridan asked them who Armentrout was and why Frazier and Paden hadn't told him of Armentrout. Frazier told Sheridan that "Armentrout" did not exist and then accused Sheridan of tapping his phone. Sheridan did not deny the accusation. (Frazier Aff. App. 23a; Paden Aff. App. 30a)

41. Petitioners were indicted May 9, 1963. Frazier, Paden and Cole were indicted May 21, 1963. Thereafter Sheridan summoned the latter three to Nashville. Sheridan was trying to convince them they could expect no help from the Hoffa group; that only Sheridan could help them; that it was not too late for them to change their story and get the indictment dropped. (Cole Aff., App. 32a, 33a; Paden Aff., App. 29a, 30a)

42. Sheridan played several portions of a tape recording. At one point, the tape sounded like a group of men talking. One voice inquired about Frazier and the guys from West Virginia. A voice said, "Tommy what's your opinion?" Cole recognized "Tommy's" voice as that of Thomas Osborn. (Hoffa's local counsel). Osborn said "they (Frazier, Cole and Paden) had gotten into the mess themselves and they could get out the best way they can." A similar discussion was recorded at other segments of the tape. In another portion of the tape, there was a question asked whether any statements had been obtained from

Frazier, Cole and Paden; and another voice said he was going to use his lawyers as witnesses. (Cole Aff. App. 32a-34a)

43. There were three voices which were actually clear, two of which Cole recognized as the voices of Osborn and Bufalino. There were other voices not clear. On one portion of the tape, Cole heard a telephone ringing. (Cole Aff. App. 34a)

44. Paden recognized the recording as a typical one made in a room with several persons present. Paden recognized Hoffa's voice. Hoffa told those present they were to be witnesses for him. (Paden Aff. App. 30a)

45. Frazier recognized the voices of Hoffa, Osborn and Bufalino. The recording sounded like a group of men talking. Sheridan would play a part of the tape and then skip to another part. Mention was made of a person named Dranow. (Frazier Aff. App. 26a, 27a)

46. Sheridan told them that he had the whole Hoffa group covered from stem to stern. Before playing the tape, Sheridan told them he was going to do something he had never done before. He then played the recording to them. (Cole Aff. App. 32a)

47. Frazier asked Sheridan who the people on the tape were and Sheridan said they were the big boys—Hoffa and his attorneys discussing "you fellows". Sheridan told them they (Frazier, Cole and Paden) were on their own; that Tweel and Dorfman had abandoned them and that he (Sheridan) was the only one who could help them. (Cole Aff. App. 34a)

48. Sheridan asked them not to disclose the fact that he had played the tape. (Cole Aff. App. 34a)

49. The conferences between Petitioner Hoffa and his counsel, as reproduced on Sheridan's tape did occur. (Osborn Aff. App. 40a; Bufalino Aff. App. 38a; Hoffa Aff. App. 36a)

III. THE WIRETAPPING OF ATTORNEY WILLIAM E. BUFALINO'S HOME TELEPHONE

50. On November 4, 1966, Paul Louis Quaglia, an officer of the Police Department of the City of Detroit, admitted under oath that pursuant to orders of a superior of that department, in 1962 and 1963, had a tap on the telephone of William E. Bufalino, one of Petitioner Hoffa's counsel. Quaglia knew of no interest the Detroit Police might have had in Mr. Bufalino; and Quaglia believed the Detroit Police Department was tapping Mr. Bufalino's home telephone for the Federal Government (Bufalino Aff. App. 43a; Quaglia Aff. App. 46a)

51. From 1957, Bufalino had been counsel for Petitioner Hoffa, acting as liaison between Hoffa and his trial and local counsel as well as the attorneys for the co-defendants. He had numerous telephone conversations with them between January 1, 1963 and December 31, 1964, with reference to this case.

52. These conversations related to problems of defense, pre-trial investigations, results of interviews with witnesses and proposed trial strategy and tactics. (Bufalino Aff. App. 41a, 42a, 43a)

53. From January 1, 1963 until December 1963 much of Bufalino's time was spent in field investigation. He called his home and left messages with his wife for transmission to co-counsel and Petitioner Hoffa.

54. During this period, he was home almost every weekend from where he would telephonically advise

Petitioner Hoffa, co-counsel and counsel for co-defendants of the results of his investigations; and would receive instructions from them as to future investigations. There were general discussions on legal problems, strategy and testimony of prospective witnesses. (Bufalino Aff. App. 42a, 43a)

55. On June 10, 1965, Bufalino learned his telephone conversations were being intercepted. On November 4, 1966, Officer Quaglia admitted monitoring his phones in 1962 and 1963.

56. All of the telephone calls from Bufalino's home had been monitored. Quaglia replayed the recordings and typed memoranda related to the contents of the call. At the listening post for the tapes, there were at least four tape recorders, four sets of earphones and a pen register to enable the police to determine what numbers Bufalino was calling. (Bufalino Aff. App. 43a, 44a)

57. Quaglia recalled at least one conversation Bufalino had with a lawyer regarding legal strategy. He also heard telephone calls made by Bufalino to others lawyers with whom he discussed legal matters. (Quaglia Aff. App. 46a)

IV. PRIOR INCIDENTS OF SUSPECTED EAVESDROPPING AND WIRETAPPING

A.

58. Ascertainment of the above facts is the culmination of a prolonged investigation seeking to establish that for many years Federal enforcement agencies have intruded on Petitioner Hoffa's constitutional rights; and have systematically pursued a course of conduct calculated to deprive him of those rights.

59. Some of these incidents are set forth in the following narrative. Standing alone these facts might not justify a conclusion of wiretapping or eavesdropping by the Government; but they provide a significant background for the allegations set forth in Subheads I, II, and III, supra.

B.

60. On November 15, 1961, an electronic transmitter was found in the hotel suite of James E. Haggerty, petitioner's chief trial counsel, in the San Juan Hotel in Orlando, Florida. Mr. Haggerty, with a group of attorneys representing petitioner and co-defendants were there to examine documents in the possession of the Government. This was pursuant to an Order of the U. S. District Court in a criminal proceeding against Hoffa in Orlando, known as the Sun Valley case. Haggerty and Bufalino were discussing that case when the transmitter was found.

61. Haggerty's room had been used as a conference room by the attorneys for at least two days prior to the discovery of the transmitter. Haggerty and Bufalino gave the transmitter to local police who turned it over to the F.B.I.

62. Agents of the F.B.I. made an appointment to interview Haggerty and Bufalino. The F.B.I. canceled the appointment. Later they were interviewed by agents. Nothing further was heard from the F.B.I. (Bufalino Aff. App. 48a, 49a)

C.

63. In the same Orlando case, counsel for Petitioner Hoffa attempted to prove that certain evidence used as the basis for the indictment had been obtained by Edward M. Jones, an employee of the U. S. Senate, who tapped his telephone lines.

64. A subpoena was served upon Jones directing him to appear before the United States District Court in Orlando and to bring certain records with him. The Senate invoked its privilege and its Rule XXX; authorized Jones to appear; forbade him to take any Senate papers with him and directed him to decline to testify as to any matter based on knowledge acquired by him in his official capacity. (Maher Aff. App. 51a)

65. Jones appeared before the Court. He testified he had actually wiretapped; and he had been employed by the McClellan Committee from March 1, 1957 to July, 1959; but invoked the Senate privilege when asked if he had been assigned to Detroit with reference to Petitioner Hoffa, while he was employed by the McClellan Committee. Jones did testify that as of March 14, 1962, he was employed by the Immigration and Naturalization Service. (Maher Aff. App. 51a, 52a) Edward Jones of the Immigration and Naturalization Service was identified on December 20, 1966, by an Assistant Director of the Federal Bureau of Investigation to William Loeb as one of three persons in charge of wiretapping for former Attorney General Kennedy. (Loeb Aff. App. 19a, 20a)

D.

66. On November 1, 1962, in the course of the trial of United States vs. James R. Hoffa, in Nashville, Tennessee, Daniel B. Maher, one of Petitioner Hoffa's trial counsel, invoked the protection of the Court against what appeared to be evidence of wiretapping of his room and that of the chief counsel, James E. Haggerty, in the Andrew Jackson Hotel.

67. On October 23, 1962, he related that he had picked up a telephone in the hotel. There was a clear

indication of an open line. He said, "Hello, who is this?" A male voice said, "This is the special switchboard".

68. On October 25, 1962, while in Mr. Haggerty's room, Maher had a telephone receiver in his hand—a voice said: "That is not Maher. Maher is in Room 732". (Maher Aff. App. 53a)

69. Upon inquiry by the Court, James F. Neal, special assistant to the Attorney General, represented to the Court that there had been no efforts to wire tap or to encroach on the privacy of the defendant or the privacy of the communication between the defendant and his counsel; and further that he had never heard of any one at the Department of Justice tapping any telephone lines. (Maher Aff. App. 54a, 55a)

70. On November 14, 1966, John Hooker, Special Prosecutor for the Government in this case, advised a business associate, Irving Davidson, that Hoffa, his attorneys and friends were foolish in Nashville, because all of the rooms and telephones in the Jackson Hotel, where they were staying, were bugged and monitored by Walter Sheridan's group in the Justice Department. (Davidson Aff. App. 18a)

71. The undersigned counsel are reliably informed, and upon information and belief, represent to the Court that Walter Sheridan, herein referred to as a consultant to the then Attorney General, was not under the supervision of the Director of the Federal Bureau of Investigation during the events narrated. He had a group of FBI agents and attorneys working under his supervision and reported only to the then Attorney General and the then Assistant Attorney General Herbert Miller.

72. Undersigned counsel are informed and believe that there were other instances of wiretapping and eavesdropping in the investigations of petitioners; but have not yet developed those leads to the point where they can represent to this Court that they, in fact, occurred.

THE RELIEF REQUESTED

The premises considered, the petitioners pray:

1. That the Court direct the Solicitor General of the United States to respond to the allegations of this motion;

2. If the response of the Government supports the allegations herein, that the Court vacate its judgments herein, and

(a) Remand the causes to the District Court with instructions to dismiss the indictments; or

(b) Remand the causes to the District Court for a new trial;

3. If the response of the Government is in the nature of a denial of the allegations herein, that the Court vacate its judgments herein and remand the causes to the District Court for a hearing and findings on the allegations of this motion;

4. That the Court withhold transmission to the Court of Appeals of this Court's mandate, opinion and judgment until the timely filing of Petitioners' filing of their joint Petition for Rehearing and the Court's determination upon it, or until the Court's decision upon this motion, if that decision be favorable to Petitioners.

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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January, 1967